IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 19112 of 2004

Between:

Mohammed Yousuf Ali, s/o Mohammed Ismail,
r/o Narayankhed of Medak District.

..... PETITIONER

AND

1 The Joint Collector/Chairman District Purchase Committee, APSWRS, Medak District.
2 Principal/Convener, A.P.Social Welfare Residential School/JC(B), Narayankhed, Medak District.
3 P.Bheemaiah, s/o P.Papaiah,
r/o Narayankhed, Medak District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more especially in the nature of mandamus declaring the action of 1st respondent in issuing impugned proceedings vide R.C.No.Vegetables/04 dated 6-10-2004 cancelling the contract of petitioner for supplying vegetables to the hostel of 2nd respondent Institution and permitting the 3rd respondent as illegal, arbitrary and unjustified.

Counsel for the Petitioner: MR.P.UDAYA BHASKARA RAO

Counsel for the Respondents 1 and 2: GP FOR SOCIAL WELFARE

Counsel for the Respondent No.3: Mr. M.D. Mahapatra

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 19112 of 2004

O R D E R:

This writ petition is filed to issue a writ of Mandamus declaring the action of the 1st respondent in issuing the impugned proceedings dated 6.10.2004 cancelling the contract of the petitioner for supplying vegetables to the hostel of the 2nd respondent-Institution and permitting the 3rd respondent as illegal and arbitrary.

In pursuance of a tender notification for supply of vegetables for the hostel of the 2nd respondent-Institution, 6 persons including the petitioner and the 3rd respondent submitted tenders. The petitioner admittedly quoted Rs.4.90/- per kg. of vegetables whereas the 3rd respondent quoted Rs.3.75/- per kg. in his tender. As the 3rd respondent is the lowest tenderer, the 1st respondent rightly awarded the contract of supplying vegetables to the 3rd respondent. Thereafter, the 3rd respondent could not supply the vegetables to the hostel of the 2nd respondent and failed to perform the contract work regularly. There upon, the 1st respondent vide proceedings dated 9.9.2004 cancelled the tender of the 3rd respondent after issuing due notice to him and awarded the contract of supplying vegetables at the rate of Rs.4.90/- per kg. to the petitioner as the 2nd lowest tenderer. Accordingly, from 9.9.2004 onwards the petitioner was supplying vegetables to the 2nd respondent-institution. While so, the 3rd respondent seems to have made a representation dated 4.10.2004 to the 1st respondent stating that due to drought situation he was not able to supply vegetables at the rate of Rs.3.75/- per kg. and that he may be permitted for supplying vegetables at Rs.4.90/- per kg.

Surprisingly, the 1st respondent cancelled the tender of the petitioner by issuing impugned proceedings dated 6.10.2004. The grievance of the petitioner is that the 1st respondent has not even given any notice before issuing the impugned proceedings cancelling his contract and it is not even the case of 1st respondent that the petitioner has committed any irregularity or laches in supplying the vegetables. Hence, the present writ petition.

The 1st respondent filed counter admitting the issuance of tender notice and approving the tender of the 3rd respondent in the first instance at Rs.3.75/- per kg. It is further stated that due to abnormal increase of rates in the vegetable market, the 3rd respondent could supply the vegetables for two months only. Thereafter the 3rd respondent made a representation to the Chairman to increase the approved rate. As the petitioner was prepared to supply the vegetables at Rs.4.90/- per kg., orders have been issued in his favour. According to the respondents, the orders issued in Memo No.Veg./04-2 dated 9.9.2004 were cancelled just to save the poor farmer and his family from the financial losses. Except this, there is no other motive behind this change. The petitioner has no right to compel the purchase committee to continue to purchase vegetables from him only. The Chairman, Purchase Committee has power to withdraw or cancel the orders issued earlier without assigning any reason or notice thereof. Hence, he prays to dismiss the writ petition.

The 3rd respondent filed counter affidavit stating that as he was the lowest bidder, contract of supply of vegetables was awarded in his favour. Due to drought condition in the District, he gave a representation and he was not aware of the proceedings dated 9.9.2004 and there was no notice issued to him. The cancellation of his contract without following due procedure of law is against the principles of natural justice and the petitioner has not supplied vegetables to the 2nd respondent from 9.9.2004. The petitioner has no locus standi to file the writ petition because his

contract period is not over. His representation was duly considered by the 1st respondent who passed the impugned proceedings and the same does not suffer from any legal infirmities. Hence, he prays to dismiss the writ petition.

Learned counsel for the petitioner contended that without any notice or opportunity the impugned proceedings have been issued basing on the representation given by the 3rd respondent herein and therefore the order under challenge suffers from legal infirmities.

On the other hand, learned counsel for the respondents 1 and 2 contended that in order to give financial support to the poor farmer i.e. the 3rd respondent, the impugned proceedings have been issued and it is for the Committee to cancel the contract without assigning any reasons and hence the order under challenge does not suffer from any legal infirmities.

Learned counsel for the respondent No.3 contended that the representation of the 3rd respondent has been considered by the 1st respondent and therefore he passed the impugned proceedings and the earlier contract in favour of the petitioner has been passed without notice to 3rd respondent and hence he prays to dismiss the writ petition.

The facts are not in dispute. The 3rd respondent became the highest bidder for supply of vegetables at the rate of Rs.3.75/- per kg. For some time, he supplied the vegetables. While so, vide proceedings dated 9.9.2004 the contract in favour of the 3rd respondent is cancelled and the second lowest tender of the petitioner is approved. After cancelling the tender of the 3rd respondent, the 2nd respondent called for the willingness of the petitioner. After the petitioner gave his willingness, the 1st respondent passed the order dated 9.9.2004 directing the petitioner to supply the vegetables. Thereafter, the 3rd respondent made a representation

dated 4.10.2004 before the 1st respondent with a request to give permission to supply the vegetables at Rs.4.90/- per kg. as he was not able to supply the vegetables at Rs.3.75/- due to drought situation and financial problems. The said representation was accepted and the tender of the petitioner was cancelled. Before cancelling the said tender of the petitioner, no notice of whatsoever has been issued to the petitioner calling for his explanation. It is not a case of irregularities or laches committed by the petitioner in supplying the vegetables. Solely basing on the report of the 3rd respondent, the tender of the petitioner was cancelled. A copy of the contract said to have been entered between the 2nd and 3rd respondents is made available. As per this copy, the 2nd respondent reserves its right to cancel the agreement at any time without prior notice to the contractor in case the contractor deviates any agreement specified in the agreement. In this case it is not a case of deviation by the petitioner any one of the terms and conditions of the agreement whereby no notice is required before cancellation of the contract. Here is a case where on considering the representation of the 3rd respondent the tender of the writ petitioner has been cancelled but not for violation of any other terms and conditions of the agreement. Therefore, it is a clear arbitrary exercise of power by the 1st respondent in cancelling the contract of the writ petitioner. A reasonable opportunity should have been given to the petitioner before such cancellation. Admittedly no notice is given calling for the explanation of the petitioner.

Therefore, from the facts and circumstances of the case it is clear that the impugned proceedings dated 6.10.2004 are arbitrary and without affording opportunity to the petitioner. Hence the said proceedings are liable to be set aside.

In the result, the impugned proceedings dated 6.10.2004 are set aside and the writ petition is allowed.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Joint Collector/Chairman District Purchase Committee, APSWRS, Medak District.
2 Principal/Convener, A.P.Social Welfare Residential School/JC(B), Narayankhed, Medak District.
3 P.Bheemaiah, s/o P.Papaiah,
r/o Narayankhed, Medak District.

3. 2CCs to Government Pleader for Social Welfare, High Court Buildings, Hyderabad (OUT).

4. 2CD copies.